

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE CORRECTIONAL OFFICERS ASSOCIATION,	:	
	:	
Charging Party,	:	Review of Hearing
	:	Officer's Decision
v.	:	
	:	<u>U.L.P. No. 00-07-286</u>
DELAWARE DEPARTMENT OF CORRECTION,	:	
	:	
Respondent.	:	

Appearances

David M. Boswell, Esq., Schmittinger & Rodriguez, P.A., for DCOA
Monica Washington, State Labor Relations Office, SPO for State

Background

The Delaware Correctional Officers Association ("DCOA") is an employee organization within the meaning of §1302(h) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994), ("PERA"). DCOA is the exclusive representative of uniformed correctional officers of the Delaware Department of Correction, within the meaning of §1302(i) of the PERA.

The Department of Correction is an agency of the State of Delaware ("State") and a public employer within the meaning of §1302(n) of the PERA.

On July 25, 2000, DCOA filed Unfair Labor Practice Charge No. 00-07-286, alleging the State violated §1307(a)(1), (a)(2), (a)(3), and (a)(5) of the PERA, when it ceased providing home addresses of bargaining unit employees to DCOA, as it had agreed to do in a 1996 Memorandum of Agreement

On August 4, 2000, the State filed its Answer to the Charge, denying the charge and setting forth New Matter. DCOA amended its Charge on August 14, 2000, and filed its Response to New Matter on August 17, 2000.

On January 30, 2001, a Probable Cause Determination was issued. As there were no material issues of fact, the parties were directed to submit argument on the legal issues. The parties each

submitted a single brief, with the final brief received on April 12, 2001. On May 18, 2001, the Hearing Officer issued her decision in which she held:

- ◆ Home addresses of bargaining unit employees are reasonably relevant and necessary to DCOA in properly performing its statutory duties to represent those employees, and the disclosure of the home addresses to the exclusive bargaining representative as part of the collective bargaining process is not prohibited by 19 Del.C. Chapter 100.
- ◆ By refusing to provide DCOA with the home addresses of bargaining unit employees which are reasonably relevant and necessary to DCOA properly performing its statutory duty to represent those employees, the State failed to bargain in good faith and violated 19 Del.C. §1307(a)(1) and (a)(5).
- ◆ There is no basis on the record to conclude the State dominated, interfered with or assisted in the formation, existence or administration of DCOA in violation of 19 Del.C. §1307(a)(2), or encouraged or discouraged membership in DCOA by discrimination in regard to hiring, tenure or other terms of employment in violation of 19 Del.C. §1307(a)(3).
- ◆ There is no evidence the State violated the statute by not providing DCOA with home telephone numbers of bargaining unit employees.

The State was ordered to post a Notice of Determination and to cease and desist from refusing to provide DCOA with home addresses of bargaining unit employees.

By letter dated June 4, 2001, the State requested review of the Hearing Officer's decision. The Board was provided with the record created before the Hearing Officer and met in a public hearing on August 15, 2001, to consider the State's request, at which time the parties presented oral argument. Board Member Maron recused herself from these proceedings because she had provided representation, prior to joining the Board, on an analogous matter.

POSITIONS OF THE PARTIES

State Dept. of Correction:

The State argues on appeal that the Hearing Officer erred as a matter of law in finding home addresses are “necessary and relevant” to the proper performance of DCOA’s responsibilities as an exclusive bargaining representative under the PERA.

The State asserts DCOA could have properly met its representative responsibilities by using alternative means of communication such as flyers, bulleting boards, face-to-face meetings, and contractually provided time during new employee orientation. It argues the Courts have recognized the viability of less intrusive methods of communication than employer provided employee home addresses, citing Painting Industry of Hawaii Market Recovery Fund v. U.S. Dept. of Air Force, 26 F.3d 1479 (9th Cir. 1994); Sheetmetal Workers Union v. U.S. Dept. of Veteran’s Affairs, 135 F.3d 891 (3rd Cir. 1998)

The State also argues the Hearing Officer erred in finding the State violated its duty to bargain in good faith. The State entered into the 1996 Memorandum of Agreement in good faith, and acted in good faith reliance on the advice of its counsel in advising DCOA in 2000 that it would no longer provide home addresses. It asserts the State is precluded from providing employee’s home addresses by the Federal Privacy Act, which is incorporated by reference into Delaware’s Freedom of Information Act.

DCOA:

DCOA argues that since the parties executed the Memorandum of Agreement in 1996 there has been no change in the law to warrant the State’s unilateral refusal to honor its written commitment. By refusing to provide home addresses during a period of negotiations, the State has effectively cut off DCOA’s communication with the bargaining unit concerning on-going negotiations.

Where the State seeks to rely on the advice of its own counsel to repudiate a written agreement, it has the burden of showing a good-faith basis for relying on the opinion of counsel and that counsel was learned and experienced in the specific area of the law. DCOA asserts the State has evidenced neither point and has admitted the opinion on which it relied was only advisory.

DCOA asserts it has been well-settled law since at least 1968 that the duty to bargain in good faith requires employers to provide unions with information that is necessary to fulfill their representative obligations, including the home addresses of bargaining unit employees. Because the federal Privacy Act

precludes the federal government from releasing personal information the only employers who have not been required to provide home addresses are United States government employers. The cases cited by the State are not “duty-to-bargain” cases, but involve FOIA related requests for information. Contrary to the federal law, the Delaware FOIA specifically exempts from mandatory disclosure information which is provided pursuant to the collective bargaining process.

DISCUSSION

The State could not unilaterally decide to disregard the terms of the parties’ 1996 Memorandum of Agreement. When one party to an agreement believes, after the execution of an agreement, that a change has occurred which necessitates that the agreement be modified, there is a process to be followed. The State could have either petitioned this Board for a declaratory statement concerning its obligation to continue to provide home addresses, or it could have negotiated with DCOA directly. By failing to do either, the State violated its duty to bargain in good faith.

There is no evidence of record establishing that the law changed between the 1996 execution of the Memorandum of Agreement and the State’s decision in 2000 not to continue to provide the exclusive bargaining representative with bargaining unit employee home addresses. The United States Supreme Court issued its decision in US Dept. of Defense v. FLRA (510 US 487) (on which the Sheetmetal Workers decision (Supra.) is based) in February, 1994, at least two years before the State entered into the agreement. We are also not persuaded that the federal Privacy Act is “incorporated by reference” into the Delaware Freedom of Information Act, as the State argues. To the contrary, there is ample case law holding the federal Privacy Act does not apply to state and/or local governments.

Based upon the record created before the Hearing Officer and the arguments presented to this Board at its August 15, 2001 meeting, we find no basis on which to overturn the Hearing Officer’s decision.

WHEREFORE, the Hearing Officer's decision is affirmed in its entirety and the State is ordered to cease and desist from refusing to provide DCOA with the home addresses of bargaining unit employees.

IT IS SO ORDERED

/s/Henry E. Kressman

HENRY E. KRESSMAN, CHAIRMAN

DELAWARE PUBLIC EMPLOYMENT RELATIONS BD.

/s/R. Robert Currie, Jr.

R. ROBERT CURRIE, MEMBER

DELAWARE PUBLIC EMPLOYMENT RELATIONS BD.

Dated: September 10, 2001